

REMARKS/ARGUMENTS

The present communication is in response to the Office Action mailed on January 25, 2008. A Petition for a two-month extension of the term for response to said Office Action, to and including June 25, 2008, is transmitted herewith. A Request for Continued Examination is also submitted herewith.

Claims 1-8 and 13-24 were rejected in the Action. Claims 14, 15, 22 and 23 were objected to. Claim 17 has been amended herein. No claims have been cancelled or added. Therefore, claims 1-8 and 13-24 remain pending in the present Application. Support for all claim amendments can be found in Applicants' originally filed disclosure in at least paragraphs [0145]-[0146]. As such, no new matter has been added. Applicants set forth remarks relating to the Office Action below.

Claims 1-6 were rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Pat. Pub. No. 2003/0233145 to Landry *et al.* ("Landry"). Claims 7, 8 were rejected to under 35 U.S.C. 103(a) as being unpatentable over Landry. Claims 1, 4, 13, 16-21 and 24 were rejected under 35 U.S.C 103(a) as being unpatentable over U.S. Pat. No. 6,113,637 to Gill *et al.* ("Gill") in view of Landry.

Applicants would like to thank the Examiner for conducting an interview with Applicants' undersigned attorney on April 29, 2008. The substance of the interview focused on the teachings of Landry. Applicants' undersigned attorney reiterated the Applicants' position that there are several recitations in independent claim 1 that are neither disclosed nor suggested in Landry. This Interview is evidenced by the Examiner's Interview Summary of May 1, 2008 ("the Summary").

With respect to the 35 U.S.C. 102(e) rejection of claims 1-6 in view of Landry, the Examiner asserted that FIG. 1

of *Landry* shows an artificial intervertebral disc including first baseplate 12', second baseplate 12'' and a coupling 14 disposed between the baseplates that permits articulation. Once again, referring to FIGS. 1 and 2 of *Landry*, Applicants note that each implant 10 includes a pair of connectors 14 that extend from opposing lateral sides of the implant, with a large central opening being disposed between the connectors 14 and the first and second baseplates 12', 12''. In the Action and the April 29th telephone interview, the Examiner asserted that he is interpreting "central coupling" in the claims as between the baseplates.

Applicants reiterate their position that the "central coupling" recited in independent claim 1 is an entirely different structure than what the Examiner refers to in *Landry* as two lateral connectors 14 that connect the sides of the two baseplates. Referring to FIGS. 1A and 1H of the present application, an artificial intervertebral disc according to the present invention includes a central coupling 106 (FIG. 1A) that connects the two plates together at a central portion of each baseplate. *Landry* thusly does not teach a central coupling as claimed.

Furthermore, portions of the insertion tools shown in *Landry* are inserted into the central opening formed between the connectors 14, and therefore are situated between these elements, not around them. Thus, *Landry* neither discloses nor suggests an apparatus "wherein the central coupling is located between the at least two tines" when the tines are inserted between the baseplates. Because *Landry* does not teach an intervertebral disc having a "central coupling" nor does it teach that the central coupling is located between at least two tines when the tines are inserted between baseplates as required by amended

independent claim 1, Applicants respectfully assert that independent claim 1 is unanticipated by *Landry*.

In discussing the April 29th Interview in the Summary, the Examiner noted that "Mr. Di Bianca proposed that *Landry* did not disclose tines on the tool such that when in use, the central coupling of the baseplates was located between the tines." While the Examiner noted this statement by Applicants' undersigned attorney, the Examiner did not provide anything in the Summary contrary to this position nor has the Examiner provided any disclosure in the Action of *Landry* teaching such. The Examiner continues to assert that the coupling is between the baseplates and is thus centrally located. This does not satisfy the requirements of independent claim 1. Similarly, the Examiner cannot make up for the complete lack of teaching in *Landry* of a coupling of any sort located between the tines of an insertion tool during an insertion process. Quite simply put, the *Landry* reference does not teach each and every one of the limitations of claim 1. For the foregoing reasons, independent claim 1 is unanticipated by *Landry* and is otherwise allowable. Claims 2-6 are unanticipated, *inter alia*, by virtue of their dependence from claim 1.

The Examiner also rejected claims 7 and 8 under 35 U.S.C. §103(a) as being unpatentable over *Landry*. In response, Applicants assert that claims 7 and 8 are patentable over *Landry*, *inter alia*, by virtue of their dependence from claim 1, which is patentable for the reasons set forth above.

With respect to the rejections of claims 1, 4, 13, 16-21, and 24 under 35 U.S.C. 103(a) as being unpatentable over *Gill* in view of *Landry*, the Examiner asserted that while FIGS. 16 and 17 of *Gill* show an insertion tool with a shaft 74 and a tine 79 at the distal end that is inserted between the baseplates, *Gill* fails to disclose the tool can have two tines

parallel to one another for straddling the coupling. The Examiner asserted that *Landry* teaches a shaft with a pair of tines to form a pocket that surrounds the baseplates. The Examiner further asserted it would have been obvious for one of ordinary skill in the art to modify the tool of *Gill* and include two tines as taught by *Landry* to provide more control and grip of the implant for insertion purposes.

As by the Examiner's own admission, *Gill* fails to disclose the tool having two tines parallel to one another for straddling the coupling. As described at length above, *Landry* does not cure this deficiency. The Examiner bears the initial burden of factually supporting any *prima facie* conclusion of obviousness. M.P.E.P. § 2142. To establish a *prima facie* case of obviousness, three criteria must be met. First, there must be some suggestion or motivation to modify the references or to combine reference teachings. Second, there must be reasonable expectation of success. Finally, the prior art must teach all the claim limitations. *Id.* In light of the foregoing arguments, Applicants respectfully point to at least the third prong of the test which states that the prior art must teach all the claim limitations. Applicants respectfully assert that there is no disclosure or suggestion in either *Gill* or *Landry* "wherein the central coupling is located between the at least two tines" when the tines are inserted between the baseplates.

In addition, claim 1 currently recites that the baseplates are separated from one another by "a separation space volume when the baseplates are substantially parallel." Further, claim 1 recites that the tines are spaced and sized to be insertable and fittable "between the baseplates and to substantially fill at least a height of the separation space volume at an area of the insertion when so fitted." The Examiner cannot refer to elements 84 of *Gill* as tines because

elements 84 are not insertable and fittable between the baseplates to substantially fill the separation space volume between the baseplates as recited in independent claim 1. Rather, they are meant for placement outside of this space.

Finally, Applicants have also amended independent claim 17 to recite that the tines are insertable in the separation space volume as recited in independent claim 1. Applicants reiterate their positions set forth above in connection with claim 1 and respectfully assert that the Examiner has also not made out a *prima facie* case of obviousness with respect to independent claim 17. In light of the foregoing, independent claim 1 and amended independent claim 17 are not obvious over *Gill* in view of *Landry* and are in condition for allowance. Claims 4, 13, and 16 depending from independent claim 1 and claims 18-21 and 24 depending from independent claim 17 are also be in condition for allowance.

In view of the above, each of the presently pending claims in this application is believed to be in immediate condition for allowance. Accordingly, the Examiner is respectfully requested to withdraw the outstanding rejection of the claims and to pass this application to issue.

If, however, for any reason the Examiner does not believe that such action can be taken at this time, it is respectfully requested that he telephone Applicants' attorney at (908) 654-5000 in order to overcome any additional objections which he might have.

If there are any additional charges in connection with this requested amendment, the Examiner is authorized to charge Deposit Account No. 12-1095 therefor.

Application No.: 10/784,637

Docket No.: SPINE 3.0-437
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Dated: June 24, 2008

Respectfully submitted,

By 

William A. Di Bianca

Registration No.: 58,653

LERNER, DAVID, LITTENBERG,

KRUMHOLZ & MENTLIK, LLP

600 South Avenue West

Westfield, New Jersey 07090

(908) 654-5000

Attorney for Applicants

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